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November 1, 1984

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BY HAND

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Re: Universal City Studios, Inc. v. Nintendo
Co. Ltd. and Nintendo of America, Inc.

Dear John:

I have reviewed carefully the letter you wrote Sandy on October 24 on pending discovery issues and am prepared now to give you our response. I should start by advising you that, apart from those documents generated in the Universal-RKO litigation and in this action which are protected under the attorney-client privilege and work product doctrine, Universal has produced for Nintendo every document that was requested in Nintendo's document production requests during the course of this litigation. We are not declining to produce any document on which an attorney-client privilege could be asserted, and there has been no "selective invocation" of the privilege. Indeed, apart from the litigation-generated documents I have described, the only document that would qualify for the privilege is the memo from Joe DiMuro to Sheinberg, which I will come to later.

You are correct in noting that two of the memos we produced for Nintendo in conjunction with our letter of October 17 had certain information redacted. I refer first to the December 6, 1982 memorandum from Lillian Nayfack, which responded to the November 9, 1982 memo from Sharon Stern. I will tell you categorically that the material redacted in the December 6 memo has absolutely nothing to do with Donkey Kong, King Kong or any

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other matter remotely relating to this litigation. You will see that Stern's November 9, 1982 memo referred to three different merchandising properties. We redacted from Nayfack's response to that memo all information having to do with properties other than King Kong, i.e., "The Thing" and "Stand on It."

The other document we produced which had certain information redacted is an April 6, 1983 memo from Victor Temkin to Stanley Newman. I will again state to you categorically that the redacted information has nothing to do with Donkey Kong, King Kong or any other matter connected with this litigation. Again, you will note the introductory paragraph of that memo refers to Universal's trademarks for "Knight Rider," "Magnum" and "Dune"; the information we deleted from the copy of the memo you were given refers to those other properties.

I will also tell you that we did not decline at some earlier date to produce these memos on attorney-client grounds and then subsequently reconsider our position. You did not receive a copy of these documents in earlier discovery requests because not until this past August when Sandy herself physically went through the files maintained by Merchandising Corp. under Adler's stewardship of that company did anyone find these documents. As I say, we did not "reconsider" our position on these memos; we had no position to reconsider since we were obviously unaware of the documents. While I apologize for the belated production, I certainly do not see anything in these or the other memos to which your inquiry is directed that could remotely be classified as new information, i.e., something of substance which other responses to Nintendo's discovery did not previously disclose.

I raise with considerable reluctance a not dissimilar situation that occurred when I journeyed to Japan in January 1983 to take the deposition of your client and learned a few hours before the deposition that documents we had asked for months earlier had not been turned over to us and, indeed, that answers given to Universal's interrogatories under oath turned out, unfortunately, to be wrong, this because the Japanese company had not fully responded to earlier document requests of Universal. I accept that these things happen in litigation. But I think you are attempting to make too much over a handful of documents, the production of which at this point puts Nintendo at no disadvantage and whose contents simply corroborate points that have been known -- by both of us -- for two years.

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Let me now turn to the point you make about the attorney-client privilege. As far as I am aware, the only document we have turned over to Nintendo on which we had previously made a claim of attorney-client privilege is the June 18, 1980 memo from Joe DiMuro to Mr. Sheinberg. The decision to turn that document over to Nintendo -- and I might add to Coleco's lawyers as well in conjunction with their discovery request -- was made in September of this year, well after Ms. Sifuentes' deposition had been taken and for reasons totally extraneous to any position she took or which we supported with respect to asserting an attorney-client privilege.

I do not expect you would argue that this memorandum discloses to Nintendo anything that you have not heard Universal say in its brief, in other documents or which is not stated in answers given to Nintendo's interrogatories many months ago. If you check your files, for example, you will see that you have a letter that Joe DiMuro sent to Paramount, RKO and Dino De Laurentiis in July 1980, several weeks after his memo to Sheinberg, announcing to those parties Universal's intention to commence exploitation of its merchandising rights in King Kong. We believe the DiMuro memo is corroborative of the simple fact that Universal believed it had valid rights in King Kong and acted on the basis of that belief as early as July 1980. We also made the point at page 12 of our appellate brief, and in our answering papers on the summary judgment motion in the court below.

I have considerable difficulty in appreciating how our willingness to produce this document now, to corroborate a position taken two years ago, supplies a compelling reason to reopen Ms. Sifuentes' deposition. I did review the transcript of her testimony and, of course, read the colloquy among you, Sandy and Ms. Sifuentes, as to whether Ms. Sifuentes should or should not have been asserting an attorney-client privilege to the questions you were putting to her on those occasions. I accept your implicit point that had we turned over to you the DiMuro memo prior to your taking her deposition, you would have been entitled to cross-question her about it. But in my judgment this is a very small point and given the contents -- and substance -- of what DiMuro says in that memo, by which I mean that the information says pretty much what Universal has stated in its answers to interrogatories on the trademark infringement issue, I do not agree that you have a compelling argument for rescheduling her -- or anyone else's -- deposition.

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Turning finally to your request for other copies of "licensing newsletters" which may refer to the availability of King Kong as a licensing property, we have indeed requested that a thorough search be made at Merchandising for these newsletters. We will, of course, provide you with copies if any are found.

Sincerely,

Douglas C. Fairhurst
DOUGLAS C. FAIRHURST

DCF:cg

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